

**FILED**

Feb 06 2009, 8:40 am

*Kevin Smith*

**CLERK**

of the supreme court,  
court of appeals and  
tax court

**FRIEDLANDER, Judge**

After pleading guilty to Aiding in a Burglary, a class B felony, Jerrell Freeney was sentenced to fifteen years incarceration. On appeal, Freeney challenges the appropriateness of his sentence.

We affirm.

The facts underlying Freeney's conviction follow. On April 5, 2007, Freeney, who was eighteen years old at the time, and Lorenzo Green drove to a home in Portage, Indiana. Green approached the home, knocked on the door, and then pushed his way in when a woman answered the door. Green pointed a gun at the woman, wrapped her hands with duct tape, and then raped her.<sup>1</sup> Green then removed a safe from a bedroom and went out the front door to the car driven by Freeney. For his part in the commission of the crime, Freeney stayed in the car outside the residence as a look-out for forty-five minutes while Green was inside the house and then drove away from the scene after Green returned to the car with the safe. Freeney and Green broke open the safe and divided its contents. They then went on a spending spree, including going to a strip club, buying clothes and a stereo, and making a down payment on a Mercedes automobile.

On April 9, 2007, the State charged Freeney with aiding in a burglary and aiding in criminal confinement, both class B felonies. On June 2, 2008, Freeney pleaded guilty to aiding in a burglary as a class B felony. The State agreed to dismiss the other charge and to leave sentencing open to the trial court's discretion. At a sentencing hearing on June 30,

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<sup>1</sup> Green pleaded guilty to rape and burglary as class B felonies under Cause Number 64D01-0704-FA-3114. The trial court sentenced him to consecutive terms of fifteen years.

2008, the trial court accepted Freeney's guilty plea and thereafter sentenced him to fifteen years incarceration.<sup>2</sup> In explaining the sentence imposed, the trial court identified Freeney's history of criminal activity and delinquent behavior as an aggravating factor. The court specifically noted that this history was rather extensive given his age (nineteen at the time of sentencing in this case). The court also found as aggravating that the traumatic effect the crime had upon the victim was more than that contemplated in a charge of aiding in a burglary. The court identified Freeney's history of treatment for mental problems as the sole mitigating factor. Considering Freeney's criminal and delinquent history and numerous probation violations, the court refused to suspend any of the fifteen-year sentence, finding Freeney was not a good candidate for probation.

On appeal, Freeney argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Freeney bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

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<sup>2</sup> Ind. Code Ann. § 35-50-2-5 (West, Premise through 2008 2nd Regular Sess.) provides that the sentencing range for a class B felony is six to twenty years, with an advisory sentence of ten years.

With regard to the nature of the offense, Freeney asks that we take into consideration that he played “a small role in a horrendous crime.” *Appellant’s Brief* at 6. Although not denying that he served as a look-out for his co-defendant for forty-five minutes, drove his co-defendant from the scene of the crime, and went on a spending spree with money from the victim’s safe, Freeney points out that he did not enter the house, possess a weapon, or perpetrate the attack and rape of the victim.

We acknowledge Freeney’s role in the crime. Freeney’s sterilized version of the facts is not the entire story, however. In considering the nature of the offense, we also consider the following from the victim’s impact statement. According to the victim, Freeney was on her bus route for two years. Approximately three to four weeks prior to the burglary and the attack, Freeney came to the victim’s home and befriended the victim’s son. During one of his visits, Freeney asked to see the entire home. On the morning of the burglary and attack, Freeney drove Green to the store where Green stole duct tape. Freeney then drove Green to the victim’s residence and sat outside as a look-out for nearly forty-five minutes. Freeney then helped break open the victim’s safe and went on a spending spree. As a result of the attack and rape, the victim is now terrorized to the point she had to resign from her job and leave the state for a few weeks. The victim’s marriage has suffered and her children are angry and fearful. The victim’s family “has been torn apart and will never be the same.” *Transcript* at 7.

With regard to his character, Freeney emphasizes his mental problems and his tendency to be a follower. Freeney also argues that his sentence is inappropriate given his

family support system. Taking these factors into account, Freeney asserts that the trial court should have imposed a lesser sentence and allowed him to serve time on probation and/or home detention and/or work release.

Most telling of Freeney's character is his extensive delinquent and criminal history. As the trial court noted, Freeney entered the criminal justice system at fourteen years of age and since that time has accumulated juvenile adjudications for burglary, resisting law enforcement, criminal mischief, and conversion, all crimes if committed by an adult. The pre-sentence investigation report also reports pages of probation violations relating to his juvenile offenses. The trial judge commented that he had never seen more violations of probation in the juvenile system than the number Freeney had amassed. As an adult, Freeney has convictions for battery and false informing. Freeney's history of delinquent and criminal activity and the dozens of probation violations before this offense demonstrate that he has a complete disregard for the judicial system. He has been offered numerous chances to pull himself together and live a law-abiding life and has chosen instead to continue to disobey the laws of society. Freeney should be held accountable for his continued criminal behavior.

With regard to his mental problems, Freeney acknowledges that the trial court found such to be a mitigating circumstance. We note, however, that other than testimony that Freeney suffers from ADHD and anger control issues, there was no evidence that these mental problems contributed to this crime. Without evidence that his mental problems were directly linked to his criminal behavior, Freeney's mental problems were deserving of no more mitigating weight than that afforded by the trial court.

Having reviewed the record, we conclude that the fifteen-year sentence imposed by the trial court is appropriate in light of the nature of the offense and the character of the offender.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur